



THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.67 of 2002

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

Arakhit Tandi *Appellant*
-Versus-
State of Orissa *Respondent*

For the Appellant : Mr. Satya Narayan Mishra (4),
Amicus Curiae
For the Respondent : Mr. Sobhan Panigrahi, ASC

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 24.02.2026 :: Date of Judgment: 17.03.2026

S.S. Mishra, J. The present Criminal Appeal is directed against the judgment and order dated 05.09.2002 passed by the learned Additional District & Sessions Judge, Nuapada, in Misc. Case No. 43/13 of 2001 arising out of G.R. Case No. 243 of 2000, whereby the present appellant was convicted for the offence punishable under Section 304A of the



Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of two years.

2. The present appeal has been pending since 2002. When the matter was called for hearing consistently, none appeared for the appellant. Therefore, on 16.12.2025, Mr. Satya Narayan Mishra(4) has been appointed as Amicus Curiae to assist the Court. Therefore, this Court requested Mr. Satya Narayan Mishra(4), learned counsel, who is present in Court to assist the Court as Amicus Curiae. He has readily accepted the same and after obtaining entire record assisted the Court very effectively. This Court records appreciation for the meaningful assistance rendered by Mr. Mishra.

3. Heard Mr. Satya Narayan Mishra(4), learned Amicus Curiae for the appellant and Mr. Sobhan Panigrahi, learned Additional Standing Counsel for the State.

4. The prosecution case in brief is that the deceased child, aged about two years, the son of Punai Dei Harijan (P.W.1), was suffering from



fever suspected to be malaria. On the relevant day, the child was taken to the accused-appellant, who was staying in the house of P.W.3 and was locally known to provide medical treatment though he possessed no recognized medical qualification. The accused examined the child by using a thermometer and stethoscope and thereafter administered two injections of chloroquine to the child for treatment of malaria.

5. According to the prosecution, soon after the administration of the injections the condition of the child deteriorated and within a short span of time the child became unconscious and ultimately died. The child was thereafter taken to a pharmacist (P.W.5), who declared that the child had already expired. On receiving information regarding the incident, Chittrasen Harijan (P.W.8) lodged the written First Information Report at Jonk Police Station.

6. On the basis of the said report, the police initially registered an Unnatural Death(UD) case and conducted an inquest over the dead body. Subsequently, the dead body was sent for post-mortem examination and



after investigation the police submitted charge-sheet against the accused alleging commission of the offence under Section 304 IPC.

7. In order to bring home the charge, the prosecution examined thirteen witnesses. P.Ws.1, 2 and 3 were the eye-witnesses, who were present when the injections were administered to the child. P.W.4 was a post-occurrence witness. P.W.5 was the pharmacist before whom the child was taken after the incident. P.Ws.6 and 7 were the witnesses to the inquest. P.W.8 is the informant and a post-occurrence witness. P.W.9 is the father of the deceased child. P.W.10 was the doctor, who conducted the post-mortem examination. P.W.11 was the Constable, who brought the dead body for autopsy. P.Ws.12 and 13 were the investigating officers. The defence examined one witness and the plea of the accused was one of complete denial.

8. The learned trial Court came to the conclusion that the prosecution had successfully established that the accused had administered two chloroquine injections to the deceased child, who was suffering from fever and that soon thereafter the child died. The learned trial Court



relied upon the consistent testimony of the eye-witnesses, namely P.Ws.1, 2 and 3, which was duly corroborated by the medical evidence of the doctor who conducted the post-mortem examination and the chemical examination report detecting chloroquine in the viscera of the deceased. The Court further found that the accused had been practicing medicine in the locality without possessing any recognised medical qualification and had administered the injections without due care and competence. However, the Court held that the prosecution failed to establish that the accused had any intention to cause death or the knowledge that his act was likely to cause death so as to attract the offence under Section 304 of the Indian Penal Code. Consequently, holding that the act of the accused amounted to a rash and negligent act causing death, the learned trial Court convicted the accused under Section 304A IPC and sentenced him to undergo rigorous imprisonment for a period of two years. The relevant portion of the aforesaid judgment is extracted herein below for ready reference:-

“In the instant case the prosecution has clearly proved that the child had died due to the act of the accused i.e. due to



the injection given by the accused on the date of occurrence. However, materials on record do not prove that the accused intended to cause the death of the child or he knew that his act would be likely to cause such bodily injury as was likely to cause death. In other words in the present case it can not be said from the materials on record that the accused had ever intended to cause the death of the deceased or be known that his act would be likely to cause death. Of-course materials on record reveal that the accused was administering medicine and injections without any technical knowledge and had created an impression in the area that he is capable of giving medicines. But materials on record do not establish that the accused had any intention to take away the life of the child nor had he the knowledge that his action was likely to cause the death of the child. Since the last ingredient of section 304 I.P.C. namely the criminal intention of the accused has not been proved by the prosecution, section 304 of I.P.C. shall not be attracted. However, from the facts and circumstances of the case it must be held that the action of the accused in giving two injections shall amount to a rash and negligent act. Materials on record clearly reveal that without any technical qualification, the accused used to give medicines and injections to the human beings without taking little bit care that the same may cause hazards to the life of a human being. His action in the present case certainly amounts to gross negligence. In the decision relied on by the learned State defence counsel it has been held that the act of the accused, Dr.Khusaldas case (supra) was rash and negligent within the meaning of section 304A I.P.C. In the present case the fact that the accused who was ignorant of the science of medicine undertook the treatment and thereby showed his gross ignorance can not be disputed by any means. Therefore an inference can be drawn from the conduct of the accused that his action amounts to gross rashness or negligence. From the facts and circumstances of the case, I am of the view that even though section 304 I.P.C. shall not be attracted, the accused must be held guilty under section 304A of the I.P.C. In other words the act of the accused



shall amount to rash and negligent act within the meaning of section 304A of the I.P.C. Thus it has to be held that even though the prosecution has failed to prove its case against the accused u/s 304 I.P.C, the prosecution has been able to prove its case against the accused u/s 304A of the I.P.C. beyond all reasonable doubt. The plea taken by the accused in terms under section 313 of the Cr.P.C can not be accepted and must be held as unacceptable. I, therefore, hold the accused guilty under section 304A of the I.P.C and convict him thereunder.”

9. Mr. Mishra, learned Amicus Curiae appearing for the appellant, contended that the appellant had no intention to cause harm to the child and had merely attempted to treat the illness. In the absence of any medical facility in the village, the appellant has been rendering yeoman service without any ill intention. He further submitted that the appellant had already undergone a substantial period of custody, having been arrested on 19.12.2000 and remained in judicial custody till 22.11.2001, and therefore the sentence imposed by the trial Court deserves to be modified.

10. On the other hand, Mr. Panigrahi, learned counsel for the State, supported the judgment of the trial Court and submitted that the evidence clearly establishes that the appellant, though lacking any medical



qualification, was administering medicines and injections to villagers and that such reckless conduct resulted in the death of the minor child.

11. I have carefully considered the submissions advanced by the learned Amicus Curiae for the appellant and the learned counsel for the State and have gone through the records of the case, including the depositions of the witnesses, the medical evidence and the documents produced.

12. This Court has carefully examined the evidence on record. The testimonies of P.Ws.1, 2 and 3 clearly establish that the appellant administered two injections to the child. Their evidence is consistent and cogent and nothing material has been elicited in cross-examination to discredit their testimony. Extract of P.W.1's testimony is profitable to be reproduced for true appreciation:

“The accused gave a finding before me that my son was suffering from malaria. Then the accused brought a syringe and gave injection on the buttock of my child with a view to cure him. Prior to giving the injection to my child, he was alright, but after giving injection to him, he became senseless. Again the accused stated before me that there shall be necessity of a second injection.”



Sometimes thereafter the accused gave another injection on the other buttock of my child. There was no improvement of my child.”

13. The medical evidence adduced through P.W.10, coupled with the chemical examination report, conclusively proves that the death occurred due to chloroquine injection. The presence of injection marks and tissue reaction further corroborates the ocular testimony of the prosecution witnesses.

14. Another important circumstance established on record is that the appellant was not a qualified medical practitioner. Evidence also shows that he was carrying on medical practice in the locality and administering medicines and injections to patients without possessing any recognized medical qualification.

15. Such conduct, in the opinion of this Court, clearly amounts to gross negligence, particularly when the treatment was administered to a child of tender age. A person who undertakes medical treatment without the requisite knowledge or qualification exposes human life to serious risk and dangerous conduct resulted in loss of human life.



16. However, the materials on record do not show that the appellant had the intention to cause death or that he possessed the knowledge that his act was likely to cause death, which are necessary ingredients for the offence under Section 304 IPC. Therefore, the conclusion arrived at by the learned trial Court that the act of the appellant falls within the ambit of Section 304A IPC is well-founded and calls for no interference.

17. The present appeal has remained pending since the year 2002, and a considerable period of time has elapsed in the meantime. The appellant was arrested on 19.12.2000 and remained in custody till 22.11.2001, thereby undergoing incarceration for a period of about eleven months before being released on bail. Taking into consideration the long pendency of the appeal for more than two decades, the lapse of time since the occurrence, and the fact that the appellant has already undergone a substantial period of custody during investigation and trial, this Court is of the view that the ends of justice would be adequately served if the substantive sentence imposed upon the appellant is confined



to the period he has already undergone, while maintaining the conviction recorded by the learned trial Court.

18. Accordingly, the Criminal Appeal is partly allowed.

19. This Court acknowledges the effective and meaningful assistance rendered by Mr. Satya Narayan Mishra (4), learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 17th Day of March, 2026/Subhashis Mohanty